



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 42/2018**

**29 October 2018**

The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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# AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

## Child Support

[Rai and Child Support Registrar](#) (Child support) [2018] AATA 3965 (23 October 2018); Senior Member D J Morris

CHILD SUPPORT – departure prohibition order (DPO) – does child support liability exist – stay order made by Court – arrangements to satisfactorily discharge child support liability – whether discretion should be exercised to revoke DPO – decision affirmed

## Citizenship

[Sarmusak and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3966 (22 October 2018); Dr D Cremean, Senior Member

CITIZENSHIP – decision to refuse application for citizenship by conferral – good character test – history of offending – assault occasioning bodily harm – decision affirmed

## Compensation

[Horne and Comcare](#) (Compensation) [2018] AATA 4021 (25 October 2018); Dr P McDermott RFD, Deputy President

COMPENSATION – workers' compensation claims for psychological condition and impotency condition – previously accepted workers' compensation claim for back injury – whether the conditions can be classified as injuries or diseases – whether the employee's employment contributed to a significant degree

[Scicluna and Australian Postal Corporation](#) (Compensation) [2018] AATA 3972 (8 October 2018); K Parker, Member

WORKERS' COMPENSATION – claim for compensation for permanent impairment and non-economic loss under s 24 and s 27 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether psychological condition(s) constituted an injury or injuries as defined under the Act – injury or disease – ailment or mental 'injury' in the primary sense of the word - adjustment disorder with depressed mood – aggravation of pre-existing PTSD – whether each injury has the requisite connection with employee's employment – adjustment disorder arose from previously accepted physical injuries and other factors - aggravation of pre-existing PTSD arose from an incident between the employee and co-worker outside of the workplace – pre-existing condition of post-traumatic stress disorder arose from an act of violence by same co-worker that took place many years earlier in the workplace – deeming provision under s 6(1)(a) – whether exceptions under s 14(2) or (3) applied - whether injury resulted in permanent impairment - assessment of percentage degree of psychiatric impairment – assessment of percentage degree of non-economic loss – decision set aside

[Scicluna and Australian Postal Corporation](#) (Compensation) [2018] AATA 3973 (23 October 2018); K Parker, Member

COMPENSATION - COSTS – Tribunal found the applicant entitled to compensation under ss 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) in relation to a psychological injury – whether the hearing of the application was unnecessarily extended or adjournments caused due to conduct by the applicant or his representatives – significance of omission to arrange for updated medical examination of applicant prior to resumed hearing – whether applicant should have withdrawn application before the resumed hearing – costs order made with apportioning of costs

## Migration

[FGBP and Minister for Home Affairs](#) (Migration) [2018] AATA 3971 (23 October 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – Refugee visa – where visa was cancelled under s 501(3A) because Applicant did not pass the character test and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 65 – non-refoulement obligations – decision under review affirmed

[Hamm and Minister for Home Affairs](#) (Migration) [2018] AATA 3975 (24 October 2018); Deputy President J W Constance

MIGRATION - mandatory cancellation of visa - failure to pass character test - substantial criminal record - whether the discretion to revoke the cancellation should be exercised - Ministerial Direction No. 65 - primary considerations - protection of the Australian community from criminal or other serious conduct - nature and seriousness of conduct - assault - weapons offences - failure to obey directions or orders - break and enter - receiving stolen goods - shoplifting - larceny - destruction of property - driving offences possession of prohibited drug - offensive language and behaviour in public - stalking - accessory to a serious indictable offence - nature of future harm - likelihood of engaging in further criminal or other serious conduct - expectations of the Australian community - risk to the Australian community - impediments if removed from Australia - decision affirmed

[Harvey and Minister for Home Affairs](#) (Migration) [2018] AATA 3962 (22 October 2018); M Kennedy, Member

MIGRATION – Mandatory visa cancellation under s 501(3A) of the Migration Act 1958 (Cth) – Whether visa cancellation should be revoked – Character test – Direction No. 65 – Substantial criminal record – Protection of the Australian community – Best interests of minor children – Expectations of the Australian community – Other considerations – Strong ties to Australia – Decision under review affirmed

[NWXQ and Minister for Home Affairs](#) (Migration) [2018] AATA 3976 (24 October 2018); Mrs J C Kelly, Senior Member

Migration - mandatory visa cancellation – character test – substantial criminal record – whether to exercise discretion to revoke mandatory cancellation decision – protection of the Australian community – best interests of minor children – other considerations – decision set aside and substituted

[Roberts and Minister for Home Affairs](#) (Migration) [2018] AATA 3970 (10 October 2018); Senior Member C Puplick AM

MIGRATION – visa refusal – character test – criminal record – failure to disclose convictions in application – driving with excess alcohol in system – driving offences – damaging property – offences involving violence – primary and other considerations under Ministerial Direction No. 65 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – Impact on family members – Impact on Australian business interests – set aside and remitted with direction

[SCJD and Minister for Home Affairs](#) (Migration) [2018] AATA 4020 (25 October 2018); Senior Member R Cameron

MIGRATION - application for revocation of mandatory cancellation of visa – where applicant fails character test - where applicant warned visa may be cancelled on multiple occasions – prolonged history of offending - drug and firearm related offences – risk of harm if applicant re-offends - unacceptable risk of applicant reoffending - where Australian community would expect non-revocation – non-refoulement - decision affirmed

[Shangula and Minister for Home Affairs](#) (Migration) [2018] AATA 4013 (12 October 2018); Senior Member D J Morris

MIGRATION – refusal of visitor visa – consideration of character test – single offence – wholly suspended and short sentence – probation period now expired – absence of other offending – risk of applicant engaging in criminal conduct in Australia – assessment of risk – applicant satisfies character test – decision set aside and remitted to Respondent – written reasons requested

[XTTV and Minister for Home Affairs](#) (Migration) [2018] AATA 3961 (15 October 2018); Deputy President I Hanger AM QC

MIGRATION – refusal of a Protection (Class XA) visa on the basis of applicant's failure to pass the character test – previous criminal convictions – Ministerial Direction no. 65 applied – whether there is a risk to the Australian community of the applicant committing further offences or engaging in other serious conduct – whether refusal is, or is not, in the best interests of minor children – whether the nature of the character concerns or offences are such that the Australian community would expect that the applicant should not be granted a visa – decision under review set aside and a new decision in substitution made

[ZFJT and Minister for Home Affairs](#) (Migration) [2018] AATA 4039 (25 October 2018); Senior Member M Griffin QC

MIGRATION – Revocation of visa cancellation – Ministerial Direction No. 65 applied – primary considerations - protection of Australian community from criminal or other serious conduct - best interests of minor children in Australia - expectations of Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – decision under review affirmed

[ZYVZ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3967 (23 October 2018); Deputy President Boyle

IMMIGRATION – protection visa – safe haven enterprise visa – whether a person is a refugee – whether Applicant is a person to whom Australia has protection obligations – whether serious reasons to believe the Applicant committed serious non-political crimes – decision affirmed

## **Practice and Procedure**

[Antonious and Comcare](#) (Compensation) [2018] AATA 3968 (4 October 2018); Senior Member C Puplick AM

COMCARE – Extension of time applications – judicial guidance on time limits and extension of time applications considered – whether acceptable explanation of the delay – whether extension fair and equitable in the circumstances – whether applicant rested on their rights – prejudice to the respondent caused by the delay – prejudice suffered by general public - merits of substantial application – considerations of fairness as between the applicant and other persons – extension of time applications granted

[Engi and Minister for Home Affairs](#) (Migration) [2018] AATA 4037 (23 October 2018); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – jurisdiction – where Applicant's visa cancelled personally by the Minister under s 501BA of the Migration Act 1958 (Cth) – whether Migration Act 1958 (Cth) allows the Tribunal to review decisions made under s 501BA – no review rights exist – application for review dismissed

[McCabe and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4038 (8 October 2018); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – jurisdiction – where Applicant historically had a case decided by the Tribunal – where Applicant lodged fresh application for review of previous Tribunal matter – where Applicant did not appear at the jurisdiction hearing – whether the Tribunal has jurisdiction to hear appeals against its own decisions – Tribunal has no such jurisdiction – application for review dismissed

PRACTICE AND PROCEDURE – adjournment request – interlocutory hearing on a jurisdiction question – where Applicant made oral request to adjourn interlocutory hearing on the business day before the interlocutory hearing – whether the Tribunal should adjourn the interlocutory hearing – examination of all the circumstances – adjournment request refused

[XBBS and Comcare](#) (Compensation) [2018] AATA 4041 (25 October 2018); M Hyman, Member

COMPENSATION – jurisdiction – where the applicant has claimed both physical and psychiatric injuries - whether the applicant's psychiatric condition is a primary condition or secondary to the physical condition – factors deciding the jurisdiction of the tribunal on review - claim form and related documentation – interaction between the applicant's physical and psychiatric conditions – obligation on the tribunal in decision-making - where a claim form for the psychiatric condition has not been found – whether inference may be drawn from the absence of the claim form – where psychiatric condition consistently presented to Comcare as a secondary condition – tribunal's jurisdiction limited to the psychiatric condition as a secondary condition

## Social Security

[Essarras and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3960 (19 October 2018); C Edwardes, Member

SOCIAL SECURITY – overpayment of Family Tax Benefit – overpayment of Schoolkids Bonus – debts can be written off or waived – whether debt incurred solely due to administrative error – whether special circumstances – decision affirmed

[McGregor and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3963 (23 October 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – applicant paid lump sum in relation to worker’s compensation claim - whether lump sum preclusion period applies – whether preclusion period should be reduced – whether special circumstances exist to justify reduction of preclusion period – “special circumstances” defined - no special circumstances found – decision affirmed

[Slater; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3964 (22 October 2018); Deputy President P Britten-Jones

SOCIAL SECURITY — Disability Support Pension — Shoulder condition and adjustment disorder — Whether conditions fully treated and stabilised — Whether respondent had undertaken reasonable treatment — Whether there was a compelling reason for respondent to not undertake reasonable treatment — Apprehension of increased side effects — Decision under review set aside

[ZSYJ and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3969 (22 October 2018); K Parker, Member

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – mixed anxiety disorder – borderline personality disorder – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised and likely to persist for longer than two years – whether mental health condition diagnosed by psychiatrist or clinical psychologist at the relevant time – whether applicant had undertaken reasonable medical treatment for her conditions – significance of absence of recommendation by treating practitioner that applicant take anti-depressants – whether anti-depressant medication was reasonable treatment in the circumstances – whether applicant had undertaken reasonable treatment in the form of counselling by psychologist or review by psychiatrist – decision set aside

# Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

## Appeals lodged

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CASE NAME	AAT REFERENCE
<b>LKQD and Minister for Immigration and Border Protection</b>	<a href="#">[2018] AATA 2710</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Hona v Minister for Home Affairs &amp; Anor</b>	<a href="#">[2018] AATA 773</a>	<a href="#">[2018] FCA 1564</a>

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